

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
ALASKA-PUGET-UNITED)
TRANSPORTATION COMPANIES)
Appellants,)
vs.)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
Respondent.)

PCHB No. 165

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being the appeal of a \$1,000.00 civil penalty for an alleged oil-spill violation of RCW 90.48; having come on regularly for hearing before the Pollution Control Hearings Board on the 12th day of November, 1973, at Seattle, Washington; and appellant Alaska-Puget-United Transportation Companies appearing through its attorney, Thomas J. McKey and respondent Department of Ecology appearing through its attorney, Charles W. Lean, Assistant Attorney General; and Board members present at the hearing being Walt Woodward, presiding, and Mary Ellen McCaffree; and the Board having considered the sworn testimony, exhibit, records and

1 files herein and arguments of counsel and having entered on the
2 15th day of November, 1973, its proposed Findings of Fact, Conclusions
3 of Law and Order; and the Board having served said proposed Findings,
4 Conclusions and Order upon all parties herein by certified mail,
5 return receipt requested and twenty days having elapsed from said
6 service; and

7 The Board having received no exceptions to said proposed Findings,
8 Conclusions and Order; and the Board being fully advised in the
9 premises; now therefore,

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
11 Findings of Fact, Conclusions of Law and Order, dated the 15th day
12 of November, 1973, and incorporated by this reference herein and
13 attached hereto as Exhibit A, are adopted and hereby entered as the
14 Board's Final Findings of Fact, Conclusions of Law and Order herein.

15 DONE at Lacey, Washington, this 11th day of January, 1974.

16 POLLUTION CONTROL HEARINGS BOARD

17 Walt Woodward
18 WALT WOODWARD, Chairman

19
20 Mary Ellen McCaffree
21 MARY ELLEN McCAFFREE, Member

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FINDINGS OF FACT,
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This matter, the appeal of a \$1,000.00 civil penalty for an alleged oil-spill violation of RCW 90.48, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer, and Mary Ellen McCaffree) at a formal hearing in the Washington Commerce Building, Seattle, Washington, at 9:30 a.m., November 12, 1973.

Appellant appeared through Thomas J. McKey, respondent through Charles W. Lean, Assistant Attorney General. Eugene Barker, Olympia court reporter, recorded the proceedings.

Witnesses were sworn and testified. An exhibit was admitted.

EXHIBIT A

1 Counsel made closing arguments.

2 From testimony heard, exhibit examined and arguments considered,
3 the Pollution Control Hearings Board makes these

4 FINDINGS OF FACT

5 I.

6 On April 29 and 30, 1972, Barge 537, operated by appellant was
7 being loaded with diesel oil at the Standard Oil storage facility at
8 Point Wells in Puget Sound north of Richmond Beach, King County.

9 II.

10 This was the first use of Barge 537 since it had been overhauled
11 in a shipyard, said overhaul including the replacement with new valves
12 of all but three of the barge's loading valves.

13 III.

14 The oil, destined for federal government use in Alaska, had been
15 heated to 80 degrees to meet government specifications aimed at
16 elimination of moisture. Normally, the temperature of diesel oil
17 heated for barge loading does not exceed 60 degrees. Appellant's
18 employees engaged in the loading operation were aware that the oil was
19 warmer than usual, but were not aware of the exact temperature of the
20 oil.

21 IV.

22 The procedure for loading the barge was for the Standard Oil
23 gravity-fed oil line to be connected to the barge's tank distribution
24 system. A Standard Oil employee was stationed at or near a wheel-
25 manipulated valve near the outer edge of the pier. A normal crew of
26 three men employed by appellant were on duty on the barge. One was a

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 licensed tankerman in charge of the operation. As each of the barge's
2 tanks were being filled, a second member of the crew stood by the
3 ullage opening of the tank; his task was to call for the tank valve to
4 be closed when the oil level in the tank was six inches from the tank
5 top. The third member of the crew stood by the tank valve with a
6 wrench; his duty was to turn the tank valve one-quarter of a turn to
7 shut off that tank's supply of oil. The oil then would continue to
8 flow into an adjoining tank.

9 V.

10 Shortly before midnight on April 29, 1972, oil reached the
11 six-inch level in Tank No. 11 on Barge 537 and the order was given to
12 close that tank's valve. The employee was unable to do this. Oil
13 spilled out of the ullage opening on to the barge deck and some spilled
14 into Puget Sound before the Standard Oil attendant, on order from the
15 barge, shut down the main supply of oil with the wheel valve.

16 Appellant promptly notified the Coast Guard of the spill and took
17 immediate action with absorbant material to clean up the oil on the
18 barge deck.

19 Coast Guard personnel arrived shortly thereafter and consulted
20 with appellant's employees on the cause of the spill. By this time,
21 two men, using a larger wrench, had been able to shut the No. 11 tank
22 valve. Coast Guard permission was obtained to resume loading with no
23 change in procedure.

24 At least two more tanks and possibly a third were filled without
25 incident until, early in the daylight hours of April 30, 1972, a
26 similar incident occurred at Tank No. 15 of Barge 537. Oil was spilled

27 FINDINGS OF FACT,

CONCLUSIONS AND ORDER

1 on the deck and into Puget Sound after appellant's employee was unable
2 to shut off the tank valve. The Coast Guard again was called. Loading
3 was not resumed until the Coast Guard approved it, subject to shut-off
4 being controlled at the Standard Oil pier-side wheel valve.

5 Up to 100 gallons, total, was emitted from the ullage openings of
6 Tanks 11 and 15. How much escaped into Puget Sound is not known. At
7 10:00 a.m., April 30, 1972, an inspector for respondent observed a
8 thin film of iridescent oil on Puget Sound at the stern and on one
9 side of the barge.

10 VI.

11 Tests conducted later by the Coast Guard showed no mechanical fault
12 in the operation of the valves to Tanks 11 and 15. The valves continue
13 satisfactorily in service.

14 VII.

15 Subsequent to the incidents described above and in connection
16 therewith, respondent on June 19, 1972, cited appellant on the
17 April 30, 1972, incident for a violation of RCW 90.48 and invoked a
18 civil penalty of \$1,000.00 in Docket No. DE 72-140, said penalty
19 being one-twentieth of the maximum allowable amount which could be
20 invoked for a violation. Appellant sought relief from this penalty
21 but on August 4, 1972, respondent denied the application and restated
22 the \$1,000.00 penalty which is the subject of this appeal.

23 From these findings, the Pollution Control Hearings Board
24 comes to these

25

26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER

1 CONCLUSIONS OF LAW

2 I.

3 It is respondent's view of this somewhat puzzling set of
4 circumstances that appellant's employees, after noting the first spill
5 near midnight on April 29, 1972, should have deduced that the hotter-
6 than-usual oil had caused an expansion of the metal valve parts, thus
7 causing them to "freeze" and become inoperative. To have continued
8 loading in a normal manner in the face of such a possible deduction
9 constitutes negligence, according to respondent. Such a finding,
10 however, indirectly also would involve Coast Guard personnel who
11 likewise, failed to make that deduction.

12 II.

13 But the hotter-than-usual oil was not the "only" other-than-
14 normal factor, as contended by respondent, in the operation of
15 Barge 537 on April 29 and 30, 1972. That loading also marked the first
16 use of the barge subsequent to replacement of most of the valves in
17 a shipyard overhaul. A test of negligence is what a prudent person
18 would do in a similar set of circumstances. It seems to the Board
19 that appellant's employees reasonably could have questioned the
20 "new" valve, itself, before embarking on the theory that the hotter-
21 than-usual oil seized the valve.

22 III.

23 However, the Board believes there was negligence, not in the
24 judgment of appellant's employees, but in the loading procedure.

25 Here, in the face of stern legislative action banning negligent
26 oil spills, is a sophisticated double-valve shut-off system and only

27 FINDINGS OF FACT,

CONCLUSIONS AND ORDER

1 one-half of it is used routinely! The routine procedure was to trust
2 the barge tank shut-off valve, calling on the pier-side main valve
3 only--and in both instances too late--in dire emergency.

4 It seems to this Board that RCW 90.48 makes it incumbent upon
5 all who engage in the transfer of petroleum products near salt water
6 to use all available precautions to prevent oil spills. To fail to do
7 so is negligence, in the Board's view. It very well may be that it
8 would have taken a few minutes longer, at the topping of each tank,
9 for both the pier-side wheel valve and the tank valve to be closed,
10 but such a procedure would have prevented both spills. Failure to turn
11 both valves as routine procedure was negligence in this matter.

12 IV.

13 Respondent's penalty seems severe in view of the prompt and
14 efficient efforts of appellant's employees to stop, contain and absorb
15 the spilled oil, and in view of the paucity of evidence on the amount
16 of oil actually spilled into Puget Sound.

17 Therefore, the Pollution Control Hearings Board issues this

18 ORDER

19 The appeal is denied, but Docket No. DE 73-140 is remanded to
20 respondent for imposition of the more appropriate civil penalty of
21 \$100.00.

22 DONE at Lacey, Washington, this 15th day of November, 1973.

23 POLLUTION CONTROL HEARINGS BOARD

24 Walt Woodward
25 WALT WOODWARD, Chairman

26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER

Mary Ellen McCaffree
MARY ELLEN McCAFFREE, Member